

## **Legal Counseling Law Number 30 of 1999 About Arbitration And Alternative Dispute Resolution In Nendali Village, East Sentani District Jayapura Regency**

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### **Abstract**

*This service was carried out under the title Legal Counseling Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Nendali Village, East Sentani District, Jayapura Regency, activities carried out for partners due to cases from partners regarding misunderstanding regarding the resolution of customary land disputes based on statutory regulations. the invitation is valid and where the parties to the dispute do not want to give in or want to win on their own so that with the expertise they have, the service can carry out legal counseling so that the parties in the dispute can know about the existence of laws and regulations that regulate non-violent dispute resolution. litigation/outside of court. The method of implementing this service is carried out by applying science and technology through lectures and discussions held on Saturday 29 July 2023, at the Nendali Village Hall as well as providing assistance to partners in providing knowledge about Alternative Dispute Resolution (ADR) based on Law Number 30 of 1999 The output of this service is to provide partners with an understanding of the things that cause customary land disputes between one village and another and to provide legal assistance to partners to resolve customary land boundary disputes within customary law communities based on existing laws and regulations. applies.*

**Keywords** – Law Number 30 of 1999, Legal, Counseling

### **Abstrak**

*Pengabdian ini dilakukan dengan judul Penyuluhan Hukum Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa Di Kampung Nendali Distrik Sentani Timur Kabupaten Jayapura, kegiatan yang dilakukan kepada mitra dikarenakan adanya kasus dari mitra tentang ketidakpahaman mengenai penyelesaian sengketa tanah ulayat berdasarkan peraturan perundang-undangan yang berlaku dan dimana para pihak yang bersengketa tidak ada yang mau mengalah atau mau menang sendiri sehingga dengan keahlian yang dimiliki pengabdian dapat melakukan penyuluhan hukum tersebut guna agar para pihak yang bersengketa dapat mengetahui tentang adanya peraturan perundang-undangan yang mengatur dalam penyelesaian sengketa secara non litigasi/di luar pengadilan. Metode pelaksanaan pengabdian ini dilakukan dengan cara penerapan IPTEKS melalui ceramah dan diskusi yang dilaksanakan pada hari sabtu tanggal 29 juli 2023, di Balai Kampung Nendali serta melakukan pendampingan kepada mitra dalam memberikan pengetahuan tentang Alternatif Penyelesaian Sengketa (ADR) berdasarkan Undang-Undang Nomor 30 Tahun 1999. Adapun luaran dari pengabdian ini adalah memberikan pemahaman kepada mitra tentang hal-hal yang menyebabkan sengketa tanah ulayat antar kampung yang satu dengan kampung yang lain dan melakukan pendampingan hukum kepada mitra untuk penyelesaian sengketa batas tanah ulayat didalam masyarakat hukum adat berdasarkan peraturan perundang-undangan yang berlaku.*

**Kata kunci** - Undang-Undang Nomor 30 Tahun 1999, Hukum, Penyuluhan

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## INTRODUCTION

Land is a gift from God Almighty and is also a natural resource that is very important for the survival of mankind. Humans live and reproduce, and carry out activities on the land so that at all times humans are in contact with the land. Every human being needs a place to live as a basic need that must be fulfilled, therefore land as a place to stand for humans is a necessity for life that cannot be denied. Apart from being needed by everyone, land can also be used as a business object, because it has economic value, for example objects in the form of land can be bought and sold, given away, used as collateral for debts, humans are even created from soil and when they die they are returned (buried) in the ground. according to natural law as a creation of God Almighty.

For the Customary Law community, land has a very important position, because it is the only object of wealth that is permanent in an even more profitable condition. Apart from that, land is a place to live, a place to search, a place to bury (Soerojo Wingjodipoero, 1973). Land disputes are differences in values, interests, opinions and perceptions between individuals and between legal entities (private and public) regarding control status and/or ownership status (Nasrun Hipan, et.al. 2018). According to Achmad Sodiki (Husen Alting, 2011), one of the concepts of land control that applies to traditional communities is ulayat rights, namely the rights of a legal community as a unit that has authority outward and inward, and within which there are individual rights to Land is a right that arises from continuous intensive cultivation of a piece of (vacant) land. Meanwhile, Muchsin defines customary rights as the rights that certain customary law communities have over certain areas which are the living environment for their citizens to take advantage of natural resources, including land in the area for their survival and livelihood (Muchsin, 2006).

Disputes arising from the social interactions of customary law communities will be resolved quickly without allowing the problems they experience to linger for a long time which will cause the problem to crystallize into a more complex problem (Riska Fitriani, 2012). Land cases that often occur when viewed from the conflict of interest of the parties in land disputes include: People facing bureaucracy, People facing state companies, People facing private companies and Conflicts between people. Rights to land by indigenous peoples are known as "ulayat rights", namely a right that is owned or attached to indigenous peoples because of their law and culture, which gives them the authority to control all land or so-called ulayat land that is under their control to be utilized according to its function for the community. survival of indigenous communities (Maria S.W.Sumardjono, 2005). Apart from that, in reality there are three types of ulayat land based on their control, namely: 1) nagari ulayat land, 2) tribal ulayat land, and 3) tribal ulayat land. Article 33 paragraph (3) of the 1945 Constitution mandates the government as state administrator to be able to manage the earth, water and the wealth contained therein as well as possible for the greatest prosperity of the people.

Therefore, the recognition of customary law communities and their rights is stated in Article 18B paragraph (2) (Second Amendment) which states that "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with developments." society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law." Likewise, Article 28I paragraph (3) (Second Amendment) states that "Cultural identity and the rights of traditional communities are respected in line with developments over time and civilization. The partners in this service are the people of Nendali village, most of whom still do not understand the resolution of customary land disputes based on applicable laws and regulations. There are 2 (two) things that become problems for partners through observation of community service so that they find problems such as, among others, what factors cause customary law community customary land disputes between one village and another, and how to resolve customary land disputes within customary law communities based on applicable laws and regulations in order to obtain legal certainty.

Based on the problems mentioned above, the servants consider it important to carry out legal education on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Nendali Village, East Sentani District, Jayapura Regency.

## **METHOD**

The method of implementing this service is carried out by applying science and technology through lectures and discussions held on Saturday 29 July 2023, at the Nendali Village Hall as well as providing assistance to partners in providing knowledge about Alternative Dispute Resolution (ADR) based on Law Number 30 of 1999.

## **RESULT AND DISCUSSION**

Nendali Village is a new tourist area, which has an impact on increasing community property (land) prices. Nendali Village is located in East Sentani District, Jayapura Regency, Papua Province, which borders Jayapura City.

Lectures and legal outreach activities regarding Legal Counseling Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution for the community of Nendali village, East Sentani District, Jayapura Regency were held on Saturday 29 July 2023, attended by the local community. The main material presented was Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The following are several theories about the causes of disputes, including (Dimas Kurniawan Figna, 2011):

- a. Intercultural misunderstanding theory Intercultural misunderstanding theory explains that conflict occurs due to incompatibilities in communication between people from different cultural backgrounds. For this reason, dialogue is needed between people experiencing conflict in order to know and understand the culture of other people, reducing the stereotypes they have towards other parties.
- b. Transformation theory This theory explains that conflict can occur because of problems of inequality and injustice as well as disparities that manifest in various aspects of social, economic and political life. Adherents of this theory argue that conflict resolution can be done through several efforts such as changing structures and frameworks that cause inequality, improving relationships and long-term attitudes of parties experiencing conflict, as well as developing processes and systems to realize empowerment, justice, reconciliation and recognition of each other's existence.
- c. Public relations theory Public relations theory emphasizes the existence of distrust and group rivalry in society. Adherents of this theory provide solutions to conflicts that arise by increasing communication and mutual understanding between groups experiencing conflict, as well as developing tolerance so that people are more accepting of diversity in society.
- d. Negotiation theory, principles of negotiation theory explain that conflict occurs because of differences between the parties. Proponents of this theory argue that in order for a conflict to be resolved, the perpetrator must be able to separate his personal feelings from the problems and be able to negotiate based on interests and not on a fixed position.
- e. Identity theory This theory explains that conflict occurs because a group of people feels their identity is threatened by another party. Adherents of identity theory propose that conflict resolution due to threatened identities be carried out through the facilitation of workshops and dialogue between representatives of groups experiencing conflict with the aim of identifying the threats and concerns they feel as well as building empathy and reconciliation. The ultimate goal is the achievement of a mutual agreement that recognizes the basic identity of all parties.

The factors that cause disputes over customary law community land between one village and another are internal factors and external factors, where the internal factor is because the parties to the dispute want to win for themselves, each of them still insists on defending what they own, both both feel right because they have a disputed object, the parties to the dispute do not know or clearly

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understand the boundaries of the customary land of each tribe or clan, and there are parties to the dispute who are not present at the deliberations held by traditional leaders. attended by the head of the village/subdistrict/district head and also the local traditional community. Meanwhile, external factors include the intervention of third parties who are not the owners of the disputed customary land but interfere by providing false testimony about the origin of the disputed land or object, which will automatically make the situation worse for the parties in dispute, changes in traditional leadership. , tenuous kinship relations, changes in land values from social to economic, land history (origins) and unclear land boundaries.

In general, disputes can be resolved in 2 (two) ways, Settlement through litigation (Court) and Settlement through non-litigation (Outside of Court). Both parties to the dispute can choose which route to take in resolving their problems, because land cases are not only limited to criminal cases, civil rights and state administration, even in religious courts (such as disputes over inherited land and waqf land) there are also . So that the parties to the dispute have the right to freely choose how to handle the problem they are experiencing:

- a) Dispute Resolution through Litigation where the dispute resolution process is carried out through the courts or what is often referred to as "litigation", namely a dispute resolution carried out through a court proceeding where the authority to regulate and decide is exercised by a judge. Litigation is the process of resolving disputes in court, where all parties to a dispute face each other to defend their rights before the court. The final result of a dispute resolution through litigation is a decision that states a win-lose solution. In resolving disputes, including land disputes, it is definitely better to prioritize prevention (Preventive) rather than resolving (Repressive), meaning that when making a purchase or carrying out land registration procedures it must be done selectively, by checking ownership with the relevant agency. However, there is the possibility of problems arising due to administrative defects and inaccurate checks. So it cannot be proven that the existing data is correct, this is where a dispute occurs and it is the government's responsibility to resolve it. The government does have the main task of preventing overlapping or other land problems. This prevention effort includes firmly enforcing provisions in the application of land law. The court is a forum for seeking justice for all legal disputes, including land disputes. In accordance with applicable regulations, the court cannot reject all lawsuits submitted by the parties for any reason.
- b) Dispute Resolution through Non-Litigation where dispute resolution through Non-Litigation, we are familiar with the existence of alternative dispute resolution or Alternative Dispute Resolution (ADR), which in the perspective of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Alternative Dispute Resolution is an institution for resolving disputes outside of court based on the agreement of the parties to the exclusion of resolving disputes through litigation in court. In dispute resolution Laura Nader and Harry Todd (Dimas Kurniawan Figna, 2011) put forward several alternatives for dispute resolution procedures that exist in society, namely:
  1. Mediation, a third party that helps two parties who have a disagreement to find an agreement. This third party cannot be determined by the two parties to the dispute, or appointed by the authority to do so. Whether the mediator is the result of the choice of both parties, or because it is appointed by someone who has power, both parties to the dispute must agree that the services of a mediator will be used in an effort to find a solution. In small communities (paguyuban) there may be figures who act as mediators, also act as arbitrators and as judges.
  2. Arbitration, the two parties to the dispute agree to request a third party intermediary, an arbitrator, and from the start after agreeing that they will accept the arbitrator's decision.
  3. Negotiation, the two parties facing each other are the decision makers. The solution to the problems they faced was carried out by the two of them, they agreed, without any third party interfering. Both parties try to convince each other, so they make their own rules and do not solve them by starting from existing rules.

4. Coercion, one party forces a solution on another party. This is unilateral. These coercive actions or threats to use force generally reduce the chances of a peaceful resolution.
5. Letting it go (lumping it), the party who feels unfair treatment, fails in his efforts to press his demands. He made the decision to just ignore the problem or issue that gave rise to his demands and he continued his relationships with parties who he felt were harming him. This is done due to various possibilities such as lack of information regarding the process of submitting a complaint to court, lack of access to court institutions, or deliberately not proceeding to court because it is thought that the losses are greater than the benefits (in terms of material and psychological).
6. Avoidance, the party who feels aggrieved chooses to reduce relations with the aggrieved party, chooses to stop the relationship altogether. For example, in business relationships, this kind of thing can happen. By avoiding it, the issue that gives rise to the complaint is simply avoided. In contrast to the first solution, where the relationships continue, only the issue is considered resolved, in the second form the aggrieved party avoids it. In the first form, the relationships continue, in the second form the relationships can be stopped in part or in whole.
7. Judicial (adjudication), here a third party has the authority to intervene in problem solving, regardless of the wishes of the parties to the dispute. The third party also has the right to make decisions and enforce those decisions, meaning making efforts to ensure that the decisions are implemented.

Things that hinder:

- a. The Service Team had to repeat the explanation several times regarding alternative dispute resolution or Alternative Dispute Resolution (ADR), which is in the perspective of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This is understandable, because some participants have a general secondary school education or below.
- b. The implementation of socialization activities was a bit late because several residents were still waiting and adjusted to residents' varying working hours.

Supporting things:

- a) The Village Head provides a positive response and facilitates the Service Team with the local community.
- b) The community is very enthusiastic and open to receiving the information conveyed by the service team, this can be seen by quite a lot of residents asking questions so that the discussion atmosphere is more active.



**Figure 1.**

Signing of the service file by the Head of Nendali Village



**Figure 2.**  
Community service activities in Nendali Village

## CONCLUSION

Through socialization service activities/lectures on Legal Counseling Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Nendali village, East Sentani District, Jayapura Regency, at first it appeared that there was still a lack of interest from the local community due to a lack of knowledge about legal science, after the local community took part in the socialization and assistance by the service team, partners gain knowledge about the importance of resolving land disputes based on applicable laws and regulations. The Jayapura Regency Government needs to provide further guidance and assistance to the community in Nendali Village, East Sentani District regarding Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and there is also a need for cooperation between the community and the Regional/City/Regency Government by conducting a campaign regarding the importance of resolving customary law community land disputes based on applicable laws and regulations in order to obtain legal certainty.

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